No. 238.

Supreme Court of the United States.

RICHARD P. MORGAN, JR.,

Appellant.

vs.

THE CHICAGO & ALTON RAILROAD COMPANY,

Appellee.

ARGUMENT FOR APPELLANT.

Supreme Court of the United States.

RICHARD P. MORGAN, Jr.,
Appellant.

vs.

THE CHICAGO & ALTON RAILROAD COMPANY,
Appellee.

Appeal from the Circuit Court of the United States for the Northern District of Illinois.

STATEMENT OF FACTS.

On and before the fourth day of August, A. D. 1853, Appellant, Morgan, received a patent from the United States for the northwest quarter of the northeast quarter of section nine, township thirty, north, range seven, east of the Third Principal Meridian, in Livingston County and State of Illinois, now forming a part of the town of Dwight in said Livingston County.

About the fourth day of August, A. D. 1853, Jesse W. Fell and Kersey H. Fell entered, at the Land Office of the United States, the northeast quarter of the northwest quarter of said section nine, and on the fourth day of August, A. D. 1853, received from the United States a patent therefor.

That one James C. Spencer, a short time prior to the sixth day of August, A. D. 1853, entered, at the Land Of-

fice of the United States, the southwest quarter of section four, in the same township and range, and on the fourth day of August, A. D. 1853, received from the United States a patent therefore. That one John Lathrop, a short time prior to the sixth day of August, A. D. 1853, entered, at the Land Office of the United States the southeast quarter of the southwest quarter of section four, in the same township and range, and on the fourth day of August, A. D. 1853, received from the United States a patent therefor.

The said four forty acre tracts cornered together, and formed in the aggregate one hundred and sixty acres in a single body.

On the 28th of July, A. D. 1853, Fells, Spencer and Lathrop conveyed to Morgan the said several parcels of land entered by them, as aforesaid, which deeds were absolute upon their face.

It is claimed and admitted that those conveyances were made upon a verbal understanding that Morgan would, upon the land so deeded to him, and a portion of his own forty acres, lay out and plat, according to the Statutes of the State of Illinois, a town (afterward called Dwight.)

On the sixth day of August, A. D. 1853, Morgan conveyed to the Chicago & Mississippi Railroad Company a right of way one hundred feet wide across the said land patented to him by the United States. By the terms of the deed of Morgan of the sixth of August, A. D. 1853, to the railroad company, said company agreed "to erect and keep up station houses and other necessary depot buildings on said first mentioned tract."

Record, p. 42. Marginal, p. 113.

This conveyance by Morgan to the railroad company, through his forty acre tract, and the covenants therein, must be presumed to express the actual intention of Morgan, and also of the railroad company. The railroad company accepted the grant of the hundred feet, and by so doing cove-

nanted to erect on that hundred feet, and keep up, station houses and other necessary depot buildings thereon.

On the thirtieth day of January, A. D. 1854, Morgan made a plat embracing the four forties before mentioned, and laid the said lands off into a town called Dwight.

This plat was made pursuant to the Revised Statutes of Illinois, A. D. 1845, chapter 25, and in the certificate appended to the plat, signed and sealed by Morgan, occur these words: "And the streets and alleys as therein (by said plat) described are hereby donated to the public."

In the plat of the town of Dwight there was designated a hexagonal piece of ground bounded on the East and West by streets named East and West street respectively. This piece of ground included within its limits the ground upon which was the said right of way, one hundred feet wide, theretofore granted by Morgan to the said railroad company, making an irregularly shaped piece of ground, for the most part about two hundred feet wide and about one thousand feet long. The main track of the railroad company was marked as running directly through the center.

This tract was marked upon the plat as a single parcel and recorded with the word "Depot" written just above the center line of the railway upon the one hundred feet. The words "Depot grounds" do not appear upon the original map in proof, as will be seen by reference to the original transcript of the record. The two strips of land, each fifty feet wide, adjoining on either side, the hundred feet right of way, aforesaid, are the premises in controversy.

The pieces in controversy remained uninclosed for several years after the making of the plat, and were passed over by many people for business connected with the railroad, without objection on the part of Morgan.

No taxes have ever been paid by the Railroad Company upon the two strips in question.

After the decision of the Supreme Court of Illinois in this

controversy, in January, A. D. 1872, Morgan and his grantees have paid all the taxes assessed upon the land in question.

The first actual occupation by any person of either of the two strips in question, was in A. D. 1857, when Morgan erected a corn crib across the whole width of the east strip, and since that time he has been in the occupation of portions of both strips, both personally and by his grantees and tenants, to the exclusion of the public, and claiming to be the owner, not only of the portions so occupied, but also of the residue of the ground in controversy, by the cross bill of the Chicago & Alton Railroad Company.

Record, p. 21. Marginal, p. 57.

It is alleged and claimed that the conveyances by the Fells, Spencer and Lathrop to Morgan, of the 28th of July, A. D. 1853, were made upon the trust that Morgan should plat the land as the town of Dwight, but it is nowhere alleged in said cross bill that Morgan received said conveyances upon any trust or understanding that he would dedicate to the public or convey to the railroad company any portion of those lands.

The answer of Morgan to the said cross bill sets up the statute of frauds against the claim of the complainant in said cross bill, that Morgan was by any verbal understanding to convey back any portion of the lands mentioned in the various conveyances, and also the Statute of the State of Illinois declaring that no trusts shall be valid unless proved by a written instrument.

Record, p. 61. Marginal, 161, 162.

On the first of July, A. D. 1864, the railroad company made a lease to Joseph McPherson of premises described as follows: "Commencing at a point thirty-two feet east of the center line of the main track * * * * and running south one hundred and fifty feet, and east to the line of the company's right of way."

Record, p. 23. Marginal p. 62.

Record, p. 34. Marginal, p. 93.

McPherson soon after erected a warehouse, elevator and grist mill partly upon the right of way of the company, and partly upon the east strip of fifty feet.

On the 12th of September, A. D. 1866, the railroad company executed a lease to John B. Campbell, whereby, for the FIRST TIME, it assumed to demise a portion of the east strip.

Record, p. 23. Marginal, p. 63.

The lease made to Strong and Newell in January, A. D. 1868, as in the case of McPherson, limited the land leased to a portion of the one hundred feet right of way conveyed by Morgan in August, A. D. 1853.

After the lands contained in the town of Dwight had been platted and the plat recorded, as before stated, a partition was made between the parties in interest of the blocks and lots remaining unsold in the town, and on the fourteenth of May, A. D. 1855, Morgan conveyed to the Fells, Spencer and Lathrop respectively, certain specific lots, which were accepted as full satisfaction of their respective interests in the lands so laid off. At and from that time until the present neither Spencer, Lathrop nor the Fells ever claimed any interest in the two strips in question.

Testimony of Spencer. Record, p. 72. Marginal, p. 192.

Testimony of Jesse W. Fell. Record, p. 78, 79. Marginal, p. 206, 207.

The testimony of Morgan, commencing on Record p. 96, Marginal p. 249, gives a description in detail of the manner in which the two strips in controversy have been occupied from the original occupation of any part of them to the present time.

Testimony of James G. Strong. Record, p. 110. Marginal, p. 281, 284.

Also Map Exhibit No. 2. of defendant's evidence. Record, p. 295.

From this evidence it appears that both strips have been occupied by various individuals to the exclusion of the public, such individuals claiming rights personal to themselves.

On the question of the dedication of the strips in controversy to the public, the following testimony will be found in the record :

Testimony of Morgan. Record, p. 103. Marginal p. 266.

Testimony of James C. Spencer. Record, p. 73. Marginal p. 192.

Testimony of Jesse W. Fell. Record, p. 78. Marginal page 206.

Testimony of Joseph I. Dunlop. Record, p. 112. Marginal p. 286, and the resolution of the Town Board of Trustees of Dwight. Record, p. 115. Marginal p. 294.

The subject matter of the controversy in the Supreme Court of the State of Illinois on appeal from the Circuit Court of Livingston County in the case of McWilliams and Haggerty vs. Morgan appears by copies of pleadings set out in the record.

Record, p. 115 to 120.

That litigation was in truth carried on by the Chicago & Alton Railroad Company. The appeal from the decision of the Circuit Court to the Supreme Court of Illinois was taken and prosecuted by that company.

Testimony of David McWilliams. Record, p. 113, 114. Marginal p. 289, 290.

Upon the case thus presented the Court below, on the twenty-third of July, A. D. 1875, made the decree now appealed from.

Record p. 66 to 68.

By that decree it was determined that the Chicago & Alton Railroad Company and its assignees were entitled to have, hold, use, occupy and enjoy the premises in controversy, being the two fifty feet strips, and the defendant,

Morgan, and his grantees and lessees were required forthwith to surrender possession of so much of said strips as they then occupied to the railroad company, and in default of said surrender the railroad company was awarded a writ of assistance to place it in full possession thereof.

Upon the case as presented by this record two questions arise which are decisive of the merits of the controversy.

These are :

FIRST, Whether the plat acknowledged and recorded by Morgan in January, A. D. 1854, operated to dedicate to the public the two strips of land in question.

SECOND, Whether that plat had the effect within the Statutes of Illinois then in force (Revised Statutes of Illinois, 1845, chapter 25) to operate as a conveyance of the Strips in question to the railroad company.

On the first of these questions whether there was a dedication to the public of the lands in controversy, we submit that it is entirely unimportant as between these parties whether such dedication was or was not made. If it was not, then Morgan remains the owner of the land, and his rights in them were in no wise affected by the making and recording of the plat.

The dedication, if made at all, must have been to a public use and not to a private one. The occupation of lands for railroad purposes is a private use, and title to such lands cannot be obtained except in one of three ways: By donation, by purchase—both of which can be consummated only by grant—or by appropriation under the right of eminent domain.

The Supreme Court of Illinois, in this very controversy, McWilliams vs. Morgan, 61 Illinois, p. 89, have decided that the acts of Morgan in making and recording the plat in evidence in this case, did not constitute a dedication to anyone;

and ~~that~~ in that opinion says that depot grounds are held for private and not a public use.

So, in the case of Todd vs. Pittsburgh, Fort Wayne & Chicago Railroad Company. 19 Ohio State, p. 514—524.

That court says that a dedication is an appropriation of lands to a public use, and also holds that the rights of way, depots, &c., of railroad companies are not public but private property.

If this be true, it follows that a railroad company cannot take lands or other property by dedication.

It is unimportant, therefore, so far as the validity of the decree appealed from in this case is concerned, whether there was ~~not~~ or was not a dedication of the lands in question to the public.

If they were so dedicated then the decree is erroneous, because it gives the railroad company the exclusive right to their possession. But as the railroad company are not entitled to be deemed the representatives of the public, but stand in the position of a natual person, having only the rights of a private individual, the decree placing them in the exclusive possession of the land in question, not only as against the rights of Morgan and the other defendants, but also as against the rights of the public, cannot be upheld.

What has been said on this point applies to the decision of the arbitrators, Judges Davis and Drummond.

Record, p. 43. Marginal p. 116.

So far as that decision has any force it decides only this: That the facts before the arbitrators in reference to the said strips of land did "Constitute a dedication of the same to the public."

The award of these arbitrators has never been supposed to be binding, as an award, by any of the parties, for the obvious reason that the same was not final upon all the questions submitted to arbitration. The arbitrators ex-

pressly say they give no opinion as to very important questions submitted to them by the parties.

The learned Judge who decided this case in the court below evidently takes the same view of the effect of the award, and treats it as an opinion of learned lawyers persuasive of the law of the case, and not as a final decision conclusive of the rights of the parties. We repeat, therefore, that even if this court should be of the opinion that the making and recording of the plat of January, 1854, by Morgan, operated as a dedication of the strips in question to the public, still that will not uphold the decree now appealed from. It is not enough to establish the proposition that the public have an easement in the premises, authorizing them to hold possession, or that the plat operates as a statutory grant conveying the fee to the public. This does not give the Chicago & Alton Railroad Company the right to the exclusive occupation of the premises awarded by the decree, nor yet the right to process to expel the appellant and his grantees and lessees from the possession of so much of the premises as they now occupy.

But we submit to the court that the proof in this case does not establish the fact of dedication by Morgan of the premises in question. The questions involved in this case were fully considered by the Supreme Court of Illinois in the case of McWilliams vs. Morgan, 61 Illinois p. 89, before cited.

The facts presented to that court on which the opinion cited was delivered are disclosed by the record in this case. The bill and answer of the parties are set out, Record, pages 115 to 119, and we think the learned judge who decided this case in the court below was not warranted in assuming that the case before the State court was not the same in substance as the case presented to Judges Drummond and Davis as arbitrators, or as the case presented by this record. The question of dedication turns entirely as

we suppose upon the effect of the making and recording of the plat of January, A. D. 1854. That plat was before the State court, was before the abitrators and before the court below in this case, and so far as that evidence is concerned the facts were identical in all the cases.

The State court says in its opinion, "It is the map or plat alone which must be relied upon as any proof of dedication." But aside from the authority of the decision of the Supreme Court of Illinois, before cited, we submit that no dedication is shown by the record in this case. Dedications of land can be made only to the public and not to an individual, nor jointly to the public and an individual. It is not denied that whenever any person owning land, either expressly by deed, or by acts showing his clear and unequivocal intention so to do, dedicate such lands to public use, such dedication takes effect immediately, and is irrevocable. The fact of the dedication must be clearly proved. Several cases on this subject have been decided by the Supreme Court of Illinois, some of which are here referred to:

Gentleman vs. Soule, 32 Illinois, p. 279.

Kelly vs. City of Chicago, 48 Illinois, p. 388.

Reese vs. City of Chicago, 38 Illinois, p. 322.

Jacksonville vs. Jacksonville Ry. Co. 67 Ills., p. 540.

Illinois Insurance Co. vs. Litchfield 67 Ills., 368—373.

Morgan, in his evidence, denies any intention on his part to dedicate the two strips in question to the public when the plat of the town of Dwight was made.

Record p. 103. Marginal p. 266.

But the plat itself as recorded shows that the lands in question were not dedicated to the public.

They are separated from the adjoining streets by lines which as clearly limit the public right on the sides of the streets next the strips as similar lines limit those rights elsewhere in the plat. The line on the east side of East street fixes the boundary between it and block 18, and

so the line on the west side of West street between it and block 15. Has the public any right to encroach upon either block? How then is it that similar lines on the opposite sides of the same streets do not have the same effect? What were they made for except to show that the public had no right beyond them toward the railroad?

Much has been said about the fact that the hexagonal piece of land shown upon the map, and with the word "Depot" written thereon is marked out as a single parcel.

True; but as between Morgan and the railroad company that is unimportant. The company could not take by dedication; and the extent of its ownership is to be fixed by the grant proved in the case. The very object of the map was to limit the extent of the PUBLIC right, and when it had done this by the usual method, its office in that respect was performed.

The line drawn along the west side of East street, and a similar line along the east side of West street, gave notice to everybody that between those streets and the railroad were lands to which no right was given to the public.

Nor does the fact that the word "Depot" was written on the map establish any dedication. The use of land for the purpose of railroad depots is a private and not a public use. The word "Depot" was rightfully and truthfully written upon the map where it was. It is, in fact, written within the limits of the 100 feet conveyed by Morgan to the railroad company, and his deed conveying that 100 feet expressly requires the railroad company "to erect and keep up station houses and other necessary depot buildings" AT THAT VERY PLACE.

The railroad company agreed in terms to do so.

Record, p. 42. Marginal p. 113.

In addition to the map, Morgan appended to the plat of the town of Dwight a certificate in conformity with the Statute of Illinois, in which he expressly states what he

does donate to the public, in these words: "The streets and alleys as therein (in the plat) described are hereby donated to the public."

Record, p. 43. Marginal p. 115.

These words of Morgan, it is respectfully submitted, by necessary implication negative any intention of dedicating any more land than they describe.

The corporate authorities of the town of Dwight to which the strips in question would belong if they had passed to the public by dedication or by statutory grant effected by the making and recording of the plat, have, by formal resolution disclaimed any interest in them.

Record, p. 115. Marginal p. 294.

But a dedication cannot be made unless the public authorities accept it. "Acceptance is essential."

Illinois Insurance Co. vs. Litchfield, 67 Ills. 368-373.

The evidence also, on the subject of the manner of occupation of said strips, shows that by Morgan, his grantees and lessees and the railroad company, both strips have been and now are occupied to the exclusion of the public.

At the time the plat was made not only the lands in controversy, but all the lands in the vicinity of Dwight for miles around were unimproved prairie, the only building being a small one built at Morris and put up on the 100-feet right of way conveyed by Morgan to the railroad company and occupied as a passenger and freight depot after the road was completed.

Record, p. 103. Marginal p. 267.

The fact that lands remain open and unenclosed does not establish a dedication.

Warren vs. President of the City of Jacksonville, 15 Illinois, p. 240.

Kelly vs. City of Chicago, 48 Illinois, p. 388.

The first permanent OCCUPATION of either of the strips by the railroad company was in the winter of 1867–1868.

Record, p. 108. Marginal p. 277.

The leases by the railroad company to McPherson, and Strong and Newell do not cover any portion of the east strip. The lease to Campbell alone assumes to demise a portion of the east strip, and that lease dated the twelfth of September, A. D. 1866, is the first act of the railroad company, claiming any interest in either strip, disclosed by this record.

The first actual occupation of either strip was by Morgan and his lessees. In 1857, when he first went to Dwight to live, he, and Ross, by his consent, erected corn cribs on the east strip, and others occupied other portions of the strip by Morgan's consent.

The second question to be considered is whether the making and recording of the plat by Morgan operated as a grant to the railroad company, of the strips in question, by force of the Statute of Illinois.

That statute is in these words:

"The plat or map when made out, certified, acknowlenged and recorded, as required by this division, and every donation or grant to the public or any individual or individuals, religious society or societies, or to any corporation or bodies politic, marked or noted as such on said plat or map, shall be deemed in law and in equity a sufficient conveyance to vest the fee simple of all such parcel or parcels of land as are therein expressed, and shall be considered to all intents and purposes as a general warranty against such donors, their heirs or representatives, to the said donee or donees, grantee or grantees, for his, her or their use, for the uses and purposes therein named, expressed or intended, and for no other use or purpose whatever."

Revised Statutes Ills, 1845, chapter 25, section 21.

Under this statute the ground which the plat is made to convey "to the public or any individual or individuals, to any religious society or societies, and to any corporation or bodies politic, must be marked or noted as such on said plat or map."

No inference can be draw to enlarge what the plat itself states. This difficulty suggested itself to the judge in deciding the case in the court below. He says in his opinion, Record, p. 124, marginal p. 328, "there is no express language upon the plat showing by itself an intention to donate these two strips of land in controversy to the Chicago & Mississippi Railroad Company."

The assumption of the Judge in his opinion that "it is absurd to suppose that this railroad company would have located and established a depot without its officers had been led to suppose that the depot grounds indicated by the map had been in some way conveyed or donated to the company," is not warranted by the proof.

The court omits to notice the fact, that on the 6th day of August, A. D. 1853, almost six months before the plat was made, Morgan conveyed to the railroad company the right of way 100 feet wide across the forty acres owned by him, and that the company, in CONSIDERATION OF THE CONVEYANCE, expressly agreed to erect and keep up station houses, and other necessary depot buildings on that 100 feet.

The assumption of the District Judge in his opinion above quoted, is not only unwarranted by the proof, but is expressly shown not to be true. That deed contemplated the laying out of a town where it was afterwards located, and provides that the railroad company shall make safe and substantial crossings wherever the line of its road intersects the streets that might be laid out on the land, but it nowhere contemplates, either expressly or by implication, that any more land shall be conveyed to the railroad company if the town should be laid out; on the contrary, the language of the deed already cited, negatives any inference that any additional land was to be conveyed to the railroad company if the town were laid out.

The statute under consideration is one in derogation of the common law, and should not be extended by implication be-

yond its plain object as expressed by its language.

The map (imperfectly copied in the printed record) does not show any land marked or noted on it as a donation or grant to the railroad company, and therefore the plat cannot be deemed a warranty deed by force of that statute. Besides this, we submit that the acceptance by the railroad company of the deed for the 100 feet, made on the 6th of August, A. D. 1853, and its agreement to erect depot buildings thereon, limits the claim of the railroad company to the land described in that deed.

It seems to us a strange and unwarranted construction of that statute to hold, in the absence of any note upon the plat expressing Morgan's intention to donate the land in controversy to the railroad company, and in spite of the express language in his deed of August 6th, 1853, that the plat had the effect of a warranty deed to the railroad company for these specific parcels of land, and for the very purposes for which the 100 feet was agreed to be employed.

We deem it important to call attention of the court to the action of the railroad company itself in reference to the strips of land in controversy. Down to A. D. 1867 it had never listed for taxation or paid taxes on either of the strips.

Record, p. 41. Marginal p. 110.

As late as October, 1867, the Chicago & Alton Railroad Company claimed that the making of the plat by Morgan was a dedication of the two strips to the public, and that it had a right to use the same for depot purposes in common with the public.

Record, p. 41. Marginal p. 111.

The idea does not seem to have occurred to the railroad company or its officers that the plat operated as a statutory grant of the lands in question

The answer of the Chicago and Alton Railroad Company to the original bill filed in this case takes the ground that

the survey and plat did dedicate the strips of land in question for depot purposes.

Record, p. 17. Marginal p. 44.

So in the cross bill of the Chicago & Alton Company avers the same fact.

Record, p. 22. Marginal p. 59.

And the relief prayed for by the cross bill is that the two strips may be declared to have been dedicated.

A dedication is one thing; a grant to an individual is a very different thing, whether such grant be by deed in ordinary form or by force of the statute before cited.

It is too late now for the railroad company to change its ground and to insist before this court that the plat operated as a deed of the lands in question, while the whole litigation has been carried on upon the theory asserted by it in its answer and cross bill, that Morgan had parted with his rights to occupy the land by dedication to the public.

On the 12th day of March, A. D. 1872, the railroad Company procured from the heirs of John Lathrop a quit claim deed conveying all their rights to the lands in controversy. This case in its present aspect presents the extraordinary feature of what is, in effect, an action of ejectment to establish a legal title to land and recover its possession, prosecuted by bill in chancery.

We respectfully submit that this court cannot affirm a decree in a case presented on the chancery side of the court below such as this really is. The original bill of Tansey we deem to have been fatally defective. It was a bill seeking a partition of the lands in controversy wherein the complainant did not claim any legal title, and for that reason was not entitled to the relief prayed for. So the cross bill of the Chicago & Alton Railroad Company proceeds upon the ground as has been before shown, of a dedication of the lands in controversy, and does not claim or pretend to assert a legal estate in the land as belonging to the railroad company

To allow a litigation commenced and prosecuted for the purposes just stated, either by the original bill or by the cross bill, to be entirely changed in its scope and purpose, and turned into an action of ejectment, is, it seems to us, entirely unwarranted, and the decree appealed from must therefore be reversed.

If the decree of the court below is correct, or rather if its finding that the "Chicago & Alton Railroad Company, and its assigns are entitled to have, hold, use occupy and enjoy" the premises in question, and requiring Morgan, his grantees and lessees forthwith to surrender to the railroad company, so much of the premises as they occupy, and awarding a writ of assistance to the company to place it in full possession of the premises, then the court should have dismissed the bill, because the complainant in the cross bill, the railroad company, had an abundant remedy at law.

The decree does not conform in these respects to the opinion delivered by the court below.

That opinion expressly negatives a conveyance to the Chicago & Mississippi Railroad Company by the plat, but does hold that the premises in question have been dedicated for depot grounds. Of course this means a dedication of the premises for public depot grounds, as it is against all law to say it is for private depot grounds.

This being the basis of the opinion, it follows that it is error to decree to the Chicago & Alton Railroad Company any rights over these grounds that any other person, constituting a part of the public, would not also be possessed of.

That this was the ground of the decision made by the court below will further appear from that part of the opinion where it refers to the award of Judges Davis and Drummond, and after citing their decision, that the facts before them respecting the said land did constitute a dedication of the same to the public, adopts that decision as being higher authority than that of the State court. And so at

the close of the opinion the Judge says: "As I consider the fact of dedication to be established by the proof, I think the complainant in the cross bill entitled to a decree on that ground."

The decree, however departs entirely from this ground and finds that the Chicago & Alton Railroad Company and its assigns are entitled to the exclusive possession and use of the land, requiring Morgan and his assigns to surrender possession, thus utterly ignoring the rights of the public acquired by the dedication which the court says is established by the proof.

There is still another point which seems to us fatal to any claim of conveyance of these lands to the railroad company by the plat, under the Statute cited SUPRA.

The language of the Statute is that the conveyance by plat is to be "to the public or any individual or individuals, religious society or societies, or any CORPORATION OR BODIES POLITIC."

We submit that the evident meaning of this Statute, which is but a reenactment of the laws of Illinois, 1825, p. 53, before railroads were known or contemplated, is that the conveyance by plat is to be made to any eleemosenary corporation, or to any municipal corporation.

Dedications—and this statutory conveyance is a kind of dedication—can only be made to public or QUASI public corporations. The language of the Statute, which provides that the statutory grant may be made to any "religious society or societies or any CORPORATION OR BODIES POLITIC, seems to us to imply that the one should be the equivalent of the other.

Inasmuch as by this Statute a grant by plat may be made to a religious society, which has a certain public character and object, so the grant by the other branch of the same Statute made to other corporations or bodies politic, would seem to limit such grant to public or municipal corpora-

tions. The two branches of the sentence seem to be in antithesis to each other, both representing *quasi* public corpotions.

This view is further upheld by the strict meaning of the words employed in the statute. "Corporation or bodies politic" primarily must be held to relate only to public or municipal corporations, and if in the preceding phrases of the statute the words "religious society or societies" cannot be held to relate to *any society*. So the words "any corporation or bodies politic" cannot be held to relate to any private corporation for gain. The one is the co-relative of the other.

The practical construction given to a statute by the public officers of the State and acted upon by the people is to be taken into consideration, and is perhaps decisive in cases of doubt.

Matthews vs. Shore, 24 Ills., 28—Sedgwick, p. 227.

Special provision has been made in favor of railroad companies to procure title to lands by the exercise of the right of *eminent domain*.

The fact that donation or grant by statutory plat has not been practiced, if indeed known at all, no case of the kind appearing anywhere in the history of Illinois decisions, furnishes strong presumptive evidence that no such practical construction has been given to this statute by the public officers of the State, or acted upon by the people.

We submit that this, at least, shows that to give effect to a statntury grant by plat, the clearest and most unequiv ocal donation must be marked or noted as such on said plat or map.

The land thus conveyed must be clearly designated so as to separate it from all surrounding land.

The grantee must be expressly named, and if in either of these two respects the grant is uncertain, it fails to comply with the statute, and is void. Both of these elements are

necessary: A specific description of the land conveyed and a clear designation of the grantee to whom such conveyance is made.

We submit that both these are wanting in this case.

As Judge Blodgett, in his opinion says, "there is no express language upon the plat showing by itself an intention to donate these two strips of land in controversy to the Chicago & Mississippi Railroad Company." How, then, can it be reasonably argued that this plat operates as a "donation or grant * * * to any corporation or bodies politic, *marked or noted* as such on said plat or map," and shall be deemed a warranty deed of *lands undescribed* and to *parties not mentioned* in the plat or map.

For the foregoing reasons we submit that the decision of the court below cannot stand.

The opinion of the Judge in the court below intimates that even if the position that the lands in question had been dedicated be untenable, yet the complainant in the cross bill might be entitled to some relief. "Morgan may possibly, in the light of the decision of the Supreme Court of Illinois, be held to own the fee simple of the fifty feet strips, but he holds these strips for the benefit of himself, Lathrop, Spencer and the Fells."

The original bill in this case is based upon an alleged trust, and partition of that trust is prayed for.

Two questions arise here.

First. Was there a trust created in the land deeded to Morgan by Spencer, Lathrop and the Fells, for their benefit, and if a trust was thereby created, was it an undivided interest, and did it include the land Morgan joined with the land so deeded and made the town plat, or was there a trust only in favor of each one in the land deeded by them to Morgan?

It is not claimed that an express trust in writing was made by these transactions.

The deeds were simple warranty deeds without condition. No agreement in writing in which a trust was reserved was made between the parties, and all the parties unite in saying there was no written agreement between the parties, or any of them, by which any interest was reserved. "An express trust in respect to lands resting entirely in parol, is within the statute of frauds, and void."

Rogers vs. Simmons, 55 Ills., 76.

Walter vs. Klock, 55 Ills., 362.

An express trust must be in writing or it cannot exist,and there being no writing in this case showing an express trust, then, if a trust existed, it must be an implied or resulting trust. "A resulting or implied trust is usually created by the purchase of land with the money of one person in the name of another without the consent of the owner of the means."

Sheldon vs. Harding, 44 Ills., 68.

"Such trust is not created by agreement or contract."

Sheldon vs. Harding, 44 Ills., 68.

Homes vs. Homes, 44 Ills., 168.

Bruce vs. Roney, 18 Ills., 67.

"A resulting trust is never created by agreement, but always by implication of law from such acts independent of agreement by the parties. But a trust created by verbal agreement, being like any other verbal sale of lands, is prohibited by the statute of frauds, and will not be enforced in equity."

Sheldson vs. Harding, 44 Ills., 73.

In this case it is claimed that a trust arose to the grantors by parol agreement, in not only the land deeded, but also in other lands not mentioned or specified in the conveyances. But even a trust in the lands conveyed would be an attempt to create a trust by parol agreement, which is within the statute of frauds, and void. Construing the law most favorably for the complainant, and there could only be a trust

to the grantors in the land actually conveyed, for any agreement Morgan made whereby he agreed to convey any part of his own land to the grantors in return for land deeded to him, would be a simple contract in parol to convey land.

By no construction of law did Morgan hold his own land in trust. In his answer to the original bill Morgan has pleaded the statute of frauds and the statute relating to trusts.

Record, p. 61.

Aside from this, even admitting for the argument that a trust did exist, that Morgan did hold the land deeded to him by Spencer, Lathrop and the Fells, together with such of his own land as he put into the town plat in trust, as claimed, the question then arises, what did Morgan put into the town plat. If the land in controversy formed no part of the land he put into the town plat, then no trust could have arisen so far as the land in controversy is concerned. Then we must determine what land Morgan did put in. The allegation in the bill is that he put into the town plat all of the northwest quarter of the northeast quarter of section nine, or, as is generally spoken of, "his forty." On the face of the bill itself this allegation is not true, for Morgan had previously conveyed a right of way through this same land to the Chicago & Mississippi Railroad Company, and therefore so much of the forty acres could not have been put into the town plat.

Morgan denies that he put in either the said right of way or the two strips in question.

What, then, does the evidence show upon this question? We have the testimony of Spencer, Fell and Morgan, three of the parties interested. What do they say?

Spencer says, Transcript, pages 192, 193 :

"So far as I was concerned, no part of these strips were deeded to me. I regarded them as belonging to the railroad company. I don't think I ever could have had any in-

terest in them, as I think the railroad acquired them and paid well for them, too."

Fell says, Transcript, pages 203, 204 and 205:

"There were four interests in the town belonging to Morgan, Spencer, Lathrop, Kersey H. Fell and myself. We proposed to enter four forties of land, so that in laying off the town site each could contribute forty acres. We concluded, for convenience in making sales and executing papers, to vest the title of the whole quarter section in Morgan, he acting as trustee for the four interests referred to. My brother and myself had a one fourth interest—an undivided one. My understanding was that he (Morgan) put in all (of his forty), except such portions as had been dedicated or given to the railroad, including the the right of way and the *additional fifty feet strips* on either side, marked "depot grounds." I understood that notwithstanding Morgan received a full quarter share in the division of the whole property. If the two strips had been in the market for sale my brother and I would have had a fourth interest in them, but I did not suppose it was a fair subject of sale or disposition by anybody, believing it had been conveyed or agreed to be conveyed to the road."

Morgan testifies, Transcript, pages 265, 266.

"The two fifty feet strips in controversy did not form any part of the land owned by Spencer, Lathrop and the Fells. They never had any ownership in these strips, in any way. I set them apart with a view to the ultimate needs of the railroad company at this station. It was my intention if the Chicago and Mississippi Railroad Company faithfully performed the covenants contained in my deed of the 100 feet right of way to them, the performance of which materially affected the value of a large property that I owned adjoining the south end of the town, to convey to *that company*, for a nominal sum of money, the two strips of land for *its* use."

The testimony of these three witnesses, then, is that the land in controversy never became a part of the land which is claimed to have been held in trust by Morgan, and there is no contradiction in their evidence, nor even a variance. Spencer and Fell say the strips of land were not in the plat, because they thought they had been conveyed to the railroad company.

Morgan says he reserved the strips with the intention of deeding them to the railroad company when certain covenants contained in the deed of the right of way had been complied with. These witnesses are testifying about understandings which happened eighteen years before. It is not strange, then, that Spencer and Fell should have got the impression that these strips of land had become railroad property, and probably Morgan told them at the time when he reserved the strips of land from his forty acres, that he intended ultimately to deed the same to the railroad company.

However, one thing is settled. The land in controversy did not form any part of the supposed trust property. But these considerations show that Morgan did not dedicate the lands nor yet convey them by plat. How could he intend to convey on certain conditions, what he is claimed to have already conveyed by the plat, or to have already dedicated?

The second question is, was the settlement in 1855 made by the different owners of the land contained in the town plat a final settlement of all the interests involved in the matter?

The testimony of Spencer, Fell and Morgan on this point is most conclusive.

Spencer says, Transcript, pages 189, 190:

"I received everything I expected to get, after the trust was closed, in avails of the lots which the trustee sold, and in the lots which he deeded to me when the trust was closed.

The conclusion did not vary at all from the understanding I have testified to."

Also page 196.

"I don't recollect the particulars, but I was perfectly satisfied with the closing of the trust. I have no knowledge that he (Morgan) did not account for all that came into his hands.

"I was satisfied. I accepted it (the deed) in full satisfaction of my interest, as I supposed everything was divided that he (Morgan) had to divide."

Fell says, Transcript, p. 204:

"After some sales had been made, including a public auction, I was agreed upon by the other partners to make a division of the remaining lots into four parts, as equally as practicable. I accordingly divided the remaining lots unsold into four parcels, giving each a division of the lots in every division of the town, without regard to our former locations, as equitably as practicable, which four divisions were represented by the figures 1, 2, 3, 4, and my recollection is that we cast lots for those figures, which division was regarded by all as entirely satisfactory.

"The cash received by Col. Morgan, and notes arising from sales public and private, were in this final settlement all accounted for by Col. Morgan to the entire satisfaction of the Company."

Morgan says, Transcript, p. 265:

"They did receive these conveyances, the division was made by Mr. Fell and the conveyances were made by me, and all the parties received them in final settlement of the whole matter."

This testimony is substantially all there is upon the point of settlement, and it is all to the same effect, viz. That the settlement made in 1855 was regarded by the parties as a final settlement of all outstanding interests. The land in controversy here was not considered in any way. None of the parties to that division in 1855 have ever claimed any interest in the two strips in controversy, but an utter stran-

ger to the transaction, claiming by a quit-claim deed, without consideration, eighteen years afterwards, enters this court and asks it to decree him a partition of the premises. This is in substance the position of affairs in this case on the original bill of Robert P. Tansey. After eighteen years and upwards it is too late to disturb a settlement of supposed equitable interests made by the parties in full satisfaction of all claims.

It will doubtless be urged before the court that Morgan is estopped from setting up any claim to the two strips in question by the facts disclosed in the proofs.

It is in evidence, however, that he has from a very early day asserted constantly his title to these lands. That from 1857, *when he first went to Dwight to reside*, until the present time he has been personally and by his grantees and tenants in the actual occupation of large portions of both strips, the extent of which appears clearly by the map. Rec. p. 295.

The railroad company never, until a comparatively recent period, took possession by any structure of any portion of either strip, and when it did so it was notified by Morgan of his claim. The same thing is true in regard to the three elevators called the McPherson, Campbell and Strong elevators. When the erection of those buildings was commenced the parties were severally notified by Mr. Morgan of his claim to the lands.

Record, p. 26. Marginal p. 224.

Record, p. 110. Marginal p. 281.

Record, p. 98. Marginal p. 252, 254, 255, 258, 260.

It cannot be said, therefore, that he has stood by and allowed others to make improvements on his premises, concealing the fact of his claim, and is therefore now estopped from asserting title against the parties who have made such improvements.

The only other fact which we understand to be relied upon by the railroad company by way of estopple against Mor-

gan is the existence of the so called tract book of the Chicago & Mississippi Railroad Company. That book forms no part of the record in this case. We have never seen it, and do not know what it contains, and we cannot, therefore, comment intelligently on the subject. But even if we should assume that the book represented the lands in controversy as forming a part of the railroad depot ground in Dwight, still the truth is, Morgan had no connection whatever with its making or knowledge of its contents. He testifies, Record p. 109, Marginal, 280:

He was resident engineer, and had charge of the division 30 miles north and 30 miles south of Bloomington, the north end of which was about 27 miles from Dwight. He had no connection whatever with the location of the line of the road through Dwight. Spencer was the resident engineer in charge of that, and Mr. Gardner, the chief engineer, made the location. The guess or surmise—and it is little more—of Morris, the draughtsman, that he received the data for the tract book from Spencer and Morgan, may be true, and yet the data for *that part* of the tract book shown in evidence, shows no connection between Morgan and that book, since he made no surveys and had nothing to do with the location or construction of the road at Dwight.

This court will not presume, we apprehend, that Mr. Morgan, assumed, in addition to his own duties, to discharge the duties of Spencer, the resident engineer, and Mr. Gardner, the chief engineer, on a portion of the line with which he had nothing to do.

Mr. Morgan, in his answer to the cross bill—Record, p. 55, Marginal, 146, 147—denies any knowledge of or connection with the tract book, and as this is responsive to the allegations in the cross bill, it must be taken for true until overthrown by proof.

The railroad company never, until a comparatively recent

period, erected any structures on either of the two strips. Its main track and side tracks, station house, and other depot buildings, are all upon the 100 feet to which they have undisputed title, and not "upon the premises in question," as erroneously stated by the court below.

The main track of the railroad, as shown by the map—Record, p. 295—is the most westerly, and the two side tracks lie east of it. The distance between the east rail of the east side track to the east line of the 100 feet is shown to be 23½ feet.

Record, p. 105. Marginal, p. 270.

When the railroad company commenced at a later day, (the winter of 1867, 1868,) to occupy with structures, portions of the west strip, it did so with full notice of Morgan's claim to the land.

Record, p. 98. Marginal p. 252.

He neither did nor omitted to do anything which led the railroad company to suppose that he made no claim to the premises. The dates show that the coal house and track of the Jacksonville road, (now called Western Division of the Chicago & Alton Railroad,) were placed on the west strip, while the arbitration before Judges Davis and Drummond was pending.

Record, p. 41.

The railroad company cannot, therefore, claim that it has been misled by any action of Morgan, and that he is therefore estopped in equity from setting up his present claim. The railroad company knew, or was bound to know, by the deed of August 6th, 1853, that it had title to no more than the strip 100 feet wide conveyed by that deed, and that it was bound by the covenants in that deed, as the successors of the Chicago & Mississippi Railroad Company, to erect and maintain all its necessary depot buildings upon *that* 100 *feet*.

The truth in regard to the land in question seems to us entirely clear from the proofs in the case.

Morgan expected, as he himself says, both in his answer and in his evidence, ultimately to convey the strips to the railroad company for a nominal consideration, when the covenants on its part in the deed of the 100 feet should have been faithfully complied with. That has not been done to this day. The street crossings at the southerly end of the strips are yet unfinished.

Record, p. 104. Marginal, p. 267, 268.

The effect of this failure of the railroad company to perform its covenants was very injurious to Mr. Morgan. He owned about 600 acres of land immediately adjoining the town on the south and east. The crossings near his land being impassable the town neccessarily grew up about the crossings at the north end of the town plat, although the land at that place was much less desirable for occupation for a town.

Morgan estimates the injury thus occasioned to him at $25,000 or $30,000.

Inland towns upon the line of a railroad grow up about the stations, and the court can easily see how, of necessity, a failure to construct the crossings mentioned, where the railroad was impassable by teams without them, would necessarily divert travel and business away from the lands owned by Morgan.

These facts we submit furnish a sufficient reason why Morgan did not convey the lands in question to the railroad company, as he says he intended to do, if the covenants of the company were faithfully complied with. But, however this may be, the design of Morgan ultimately to convey the two strips to the railroad company was never communicated to it, nor has that company or the present company done or omitted to do anything in reliance upon that private expectation of Mr. Morgan.

He repeatedly, from time to time, called upon the railroad

company and its officers to comply with the agreements contained in the deed to them of the 100 feet.

Record, p. 101. Marginal p. 262.

In so doing, the fact that the railroad company owned no more than the 100 feet was necessarily brought to its notice. This is evident from the letter of Mr. Chanute to Morgan, dated Nov. 27, 1866.

Record p. 114. Marginal p. 295.

The railroad company then admitted its obligations to make the crossings, and that the crossings were not made at that date, more than thirteen years after its agreement to make them, but did not claim the right to have the two strips, or either of them, conveyed when the crossings should be made.

The history of this litigation shows it to be an attempt on the part of the railroad company to wrest from Mr. Morgan, by every influence a powerful company can command, the property in controversy, regardless of the opinion of the Supreme Court of Illinois, before cited, which declares: "We perceive no sufficient reason why the defendant (Morgan) should not be allowed to make use of his own ground in proceeding to erect a building upon it, or otherwise." And upon which decision Mr. Morgan has proceeded to erect buildings, lease and sell said land, at great expense to himself and to his grantees and lessees.

For these reasons we respectfully submit that the decree appealed from must be reversed.

HENRY A. GARDNER,
Solicitor for Appellant,

HAMILTON SPENCER,
Of Counsel.

EXHIBIT D.—Schedule of matters reported. Floating debt bonds and coupons of the Mobile and Ohio Railroad Company presented and proved to the special master.

Number of claim.	When filed.	Owner or agent.	Address.	Presented by—	Bonds. Description of debt.	Bonds. Amount of principal.	Coupons. Interest due from—	Coupons. Amount of interest to March 1, 1877.	Coupons. Rate per annum.	Coupons. Amount costs and protest fee.	Grand total.	Endorsed by, &c.—
	1876.											
501	May 19	Ross, William H	Mobile, Alabama		Promissory note	1,250 00	Dec. 17, '74	220 55	8%		1,470 55	A. L. Willoughby, Mrs. W. H. Ross.
502	" 23	Muldon, Rebecca A	" "	Dan. McNeil, Mobile	" "	1,400 00	Jan. 14, '76	126 62	"	3 50	1,530 12	A. Murdock.
503	" "	Muldon, Ellen	" "		" "	1,400 00	" " "	126 62	"	3 50	1,530 12	" "
504	June 8	Southern Bank of Alabama	" "	M. G. Hudson, cashier	" "	2,000 00	Jan. 5, '76	144 66	"			W'm D. Dunn.
					" "	3,300 00	Jan. 19, '76	205 46	"		4,690 12	A. L. Willoughby.
505	" 17	Heineman, Mildred F., adm'r of C. C. Heineman	Huntsville, Alabama	Lewis M. Stone, att'y, Mobile	" "	2,000 00	Jan. 25, '76	176 00	"	3 50	2,179 50	W'm D. Dunn.
506	" 23	Overall, Gibson Y	Mobile, Alabama		" "	1,000 00	Dec. 16, '75	96 66	"			A. L. Willoughby, treas.
					" "	1,200 00	Jan. 16, '76	108 00	"			" " "
507	" 29	Pollock, J., & Co	" "	L. Pollock, of firm	" "	1,000 00	Feb. 16, '76	83 33	"		3,487 99	" " "
					" "	1,080 00	Dec. 10, '75	105 84	"		1,185 84	" " "
508	July 11	Crawford, Walsh, Smith & Co., bankrupts	" "	Barnewall & Gaynor, assignees	Certificates for interest	940 00					940 00	Convertible interest certificates entitling the holder to payment thereof in bonds, without interest, by resolutions of board of directors, when presented in sums of $500 or $1,000.
509	" 18	Columbus Ins. & Bank'g Comp'y	Columbus, Lowndes Co., Miss	N. B. Goodwin, cashier	Promissory note	6,250 00	Dec. 3, '75	679 00	"	3 53		W'm D. Dunn & A. Murdock, by A. L. Willoughby, att'y.
					" "	5,850 00	Dec. 8, '75	575 90	"			A. Murdock, per A. L. Willoughby, att'y.
					" "	5,850 00	Jan. 16, '76	596 50	"	4 53		" " " " " " & W'm D. Dunn.
					" "	5,850 00	Jan. 22, '76	518 70	"	5 06		A. Murdock, W'm D. Dunn.
					Certificate for interest	15 94					96,629 16	Entitles the holder to have this amount funded in the interest-arrearage bonds, &c.
510	Aug. 19	Jones, William G	Mobile, Alabama		" "	73 33					73 33	This am't due owner for bal. of interest on exchange of income bonds. Sterling paid in exchange.
511	" 31	City Bank of New York	New York City	Benj. Cartwright, cashier	Promissory note	7,680 00	Dec. 1, '75	768 00	"	1 34	8,449 34	R. A. Handcock.
519	" 22	Raynolds, John	" " "		" "	2,400 00	Dec. 15, '75	238 53	"			" " "
					" "	2,400 00	Jan. 9, '76	219 73	"			" " "
					" "	2,400 00	Feb. 23, '76	195 80	"		7,847 46	" " "
513	" 31	Iselin, A., & Co	" " "	Adrian Iselin, of firm	" "	47,700 00	Dec. 30, '75	4,462 60	"		52,189 60	" " "
514	Sept. 5	Shipman, W. D., assignee of Duncan, Sherman & Co.	" " "	Ja's R. Collins, att'y & ag't.	" "	10,850 73 Gold.	Dec. 22, '75	1,034 43	"			" " "
					" "	10,911 86 Gold.	Jan. 22, '76	967 51	"			" " "
					" "	10,973 98 Gold.	Feb. 22, '76	899 78	"		35,637 29 gold	" " "
515	" "	" " "	" " "	" " "	Open account	19,395 31	July 22, '75	2,156 91	7%		21,489 22	Secured by collateral, as follows: 39 new-issue 2d-mortgage I. bonds, 1 second-mortgage T., 2 old-issue L.
516	" "	" " "	" " "	" " "	" "	9,740 00	" " "	1,087 09	"		10,827 09	Money paid for interest on convertible bonds.
517	Oct. 9	Conley, P. C	Mobile Co., Alabama		Promissory note	1,500 00	Jan. 27, '76	131 33	8%			A. L. Willoughby, treas.
					" "	1,500 00	Feb. 11, '76	126 66	"		3,257 99	
518	" 10	Grant, John	Mobile City, Alabama		" "	900 00	Jan. 8, '76	88 10	"			A. Murdock, W'm D. Dunn, Jno. Grant.
					" "	960 00	Feb. 26, '76	77 86	"	4 50	2,090 46	" " " " " "
519	" "	Fire Dep't Association	" " "	T. M. English, sec'y	" "	1,800 00	Jan. 19, '76	160 80	"	3 50		A. Willoughby, treas.
					" "	1,800 00	Feb. 19, '76	148 80	"	3 50	3,916 60	" " "
520	" 12	Crawford, Mrs. Q. B	" " "	Rob't C. Crawford, att'y & ag't.	Interest certificates	146 94					146 94	Certificates payable in the company's bonds.
521	" 14	Donovan, Mrs. Winifred F	Mobile Co., Ala	Isaac Donovan, her husband	Promissory note	5,000 00	Dec. 7, '75	493 33	"		5,493 33	A. L. Willoughby, treas.
522	" "	Roberts, Mrs. C. E	Mobile, Alabama	Tho's H. Herndon, ag't & att'y	" "	1,800 00	Dec. 4, '75	178 80	"		1,978 80	W'm D. Dunn.
523	" "	Hazard, James B	" "	" " "	" "	5,638 00	Jan. 4, '76	591 89	"		6,153 89	A. L. Willoughby, Ja's B. Hazard.
524	" "	Turner, Jarvis	" "	" " "	" "	1,100 00	Dec. 29, '75	103 15	"			W'm D. Dunn, A. Murdock.
					" "	1,100 00	Jan. 2, '76	102 42	"			" " " "
					" "	1,100 00	Jan. 12, '76	99 97	"			" " " "
					" "	1,100 00	Feb. 25, '76	68 20	"		4,773 74	" " " "
						$189,139 00		$18,051 93		$36 46	$207,227 46	
119												
525	Oct. 14	Sadler, Elisabeth	Mobile, Alabama	Herndon & Smith, att'ys	" "	1,750 00	Dec. 26, '75	165 27	"			A. Murdock.
					" "	1,750 00	Jan. 26, '76	153 61	"		3,818 88	" " Mrs. E. Sadler.
526	Sept. 25	Burnham, Parry, Williams & Co	" " "	" " "	" "	8,000 00	May 21, '75	1,137 77	"			" "
					" "	8,000 00	May 31, '75	1,190 00	"			" "
					" "	8,500 00	June 21, '75	1,158 22	"			" "
					" "	8,000 00	June 24, '75	1,079 11	"		36,989 10	" "
397	Oct. 14	Horton, W'm	Pleasant Ridge, Greene Co., Ala	" " "	" "	19,680 30	Nov. 19, '75	2,090 51	"			A. Murdock, W'm D. Dunn.
					" "	7,940 50	" " "	815 22	"		30,456 53	" " " "
528	" "	Dreier, Henry	Galveston, Texas	" " "	" "	1,125 00	Dec. 14, '75	109 25	"			" " " "
					" "	1,195 00	Jan. 15, '76	101 50	"			" " " "
					" "	1,195 00	Feb. 23, '76	99 00	"		3,477 75	" " " "
529	" "	Slaughter, A. J	Mobile, Alabama	" " "	" "	1,339 30	Jan. 26, '76	117 56	"		1,456 86	" " " "
530	" "	Peoples' Savings Bank	" "	" " "	" "	1,000 00	Dec. 4, '75	99 33	"			A. L. Willoughby.
					" "	960 00	Dec. 16, '75	92 80	"			" " "
					" "	1,000 00	Jan. 4, '76	92 66	"			" " "
					" "	960 00	Jan. 19, '76	85 76	"			" " "
					" "	875 00	Jan. 20, '76	77 97	"			" " "
					" "	875 00	Jan. 22, '76	77 38	"			" " "
					" "	960 00	Feb. 22, '76	79 30	"		7,335 80	
531	" "	First National Bank	Tuscaloosa, Alabama	" " "	" "	2,000 00	Dec. 22, '75	190 66	"			W. D. Dunn.
					" "	2,000 00	Jan. 22, '76	177 33	"			" " "
					" "	3,375 00	Jan. 20, '76	294 00	"		8,036 99	" " "
532	" "	Tyree, Thomas T	" "	" " "	" "	6,700 00 gold.	Dec. 4, '75	665 53	"		7,365 53 gold.	A. Murdock & W. D. Dunn.
533	" "	Foster, Thomas R	" "	" " "	" "	2,700 00	Dec. 5, '75	267 60	"		2,967 60	" " " "
534	" "	Austin, Hiram B., adm'r	" "	" " "	" "	1,416 72 gold.	Dec. 10, '75	138 83	"		1,555 55 gold.	" " " "
						$93,156 82		10,403 17			103,559 99	

RECAPITULATION.

Page 1	$189,139 00		$18,051 93	$36 46	$207,227 46
" 2	93,156 82		10,403 17		103,559 99
Total	$282,295 91		$28,455 10	$36 46	$310,787 47 c.
Promissory notes	$278,001 95				
Open accounts	32,309 31			Gold	$44,558 37
Interest certificates	476 21			Currency	266,229 10
Total	$310,787 47 c.			Total	$310,787 47 c.

(Sg'd) JAMES GILLETTE,
Special Master.

SIXTH.

We respectfully omit before the Supreme Court any reply or comment on our part, to the odious suggestions in regard to the alteration of the supersedeas bond, and likewise to the mass of vituperation against our clients. We ask the denial of the motion.

GEORGE HOADLY,
PHILIP PHILLIPS,
E. L. ANDREWS,
E. H. GRANDIN.

On November the 17th the appellants were apprised that Dunn and others Second Mortgage Trustees consent to a partial dismissal of the appeal. These Parties are not appellants and it is difficult to see how their course can affect the rights of the appellants who hold First Mortgage interests. But as matter of fact the answer of these Second Mortgage Trustees was filed on behalf of the Rogers Locomotive Works and other Second Mortgage Bondholders to the extent of three hundred thousand Dollars; it purports on its face to be filed on their behalf. Now comes the Rogers Locomotive Works representing the Committee of Second Mortgage Bondholders and objects to any pretended consent of Dunn and others or any action affecting this appeal.

The proposition is to dismiss our appeal upon the appellees consenting to waive a part of the decree. It would certainly be somewhat curious to dismiss an appeal for such a reason though it might be the basis of reversing it by consent.

If this is proposed it should not be done

partially for it would work great injustice to the appellants to allow the appellees to pick out some portion of a decree and upon waiving that to obtain the execution of the whole and the vacation of the supersedeas.

We are not under any obligation to furnish the appellees with Specifications or assignments of appeal except according to the rules of this Court. If the Appellees deem the purchasing power of the Coupons the only error which benefits them, they may consent to a reversal of the Decree or if they have a desire to vacate the supersedeas, why did they not submit the case on printed arguments.

No. 3

No. 258 { Richd P. Morgan Jr. / The Chicago & Alton R.R. Co } page 295

Exhibit No 2 J. Ashley Hopkins Examiner

PLAN
of
DEPOT GROUNDS
of the
C. A. & St. L. R.R.
at
DWIGHT. ILLS.
SHEWING THE PROPERTY OF
Richd P Morgan Jnr.

1870
September 1874

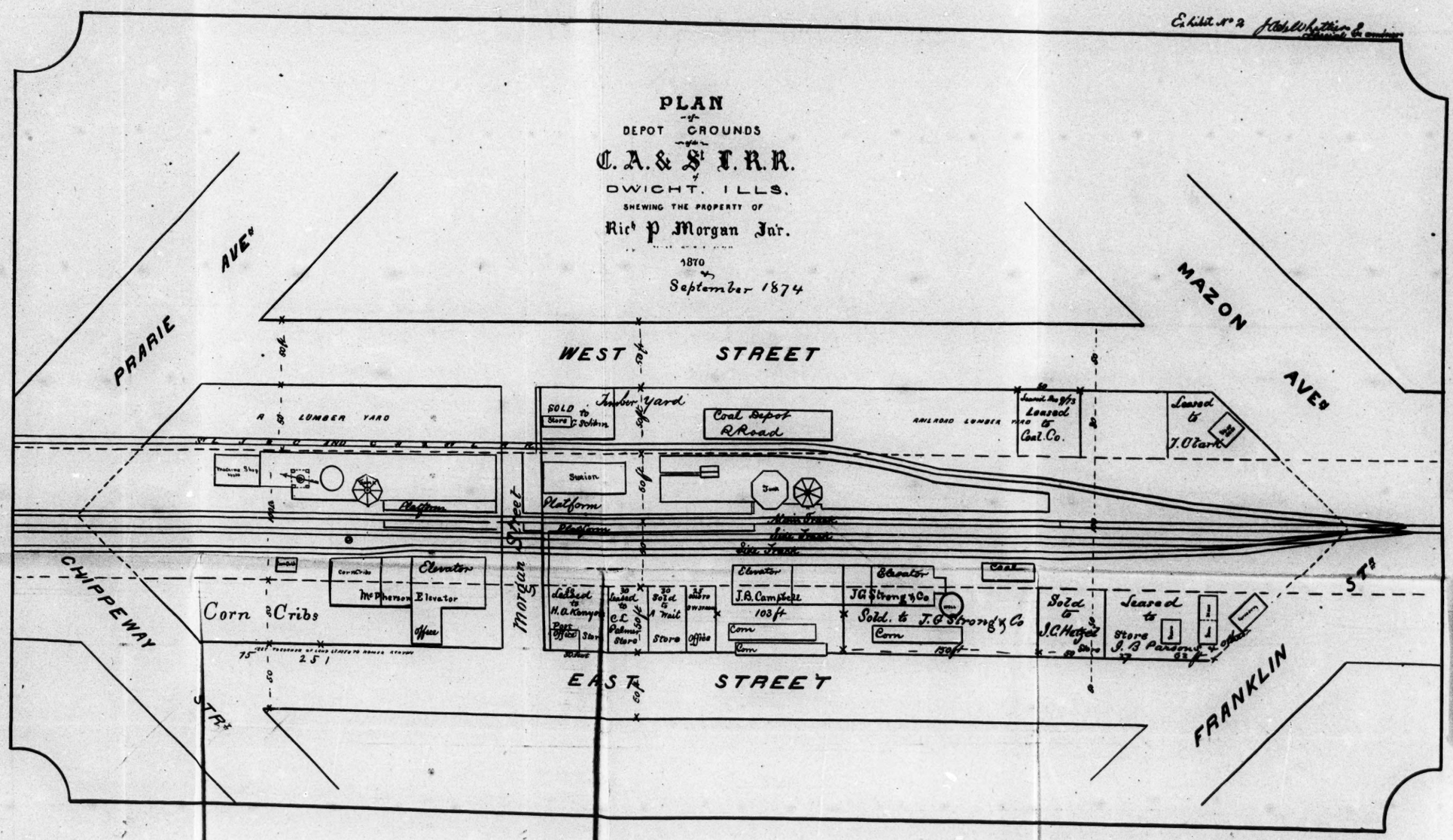


Exhibit No. 2.

DWIGHT STATION.

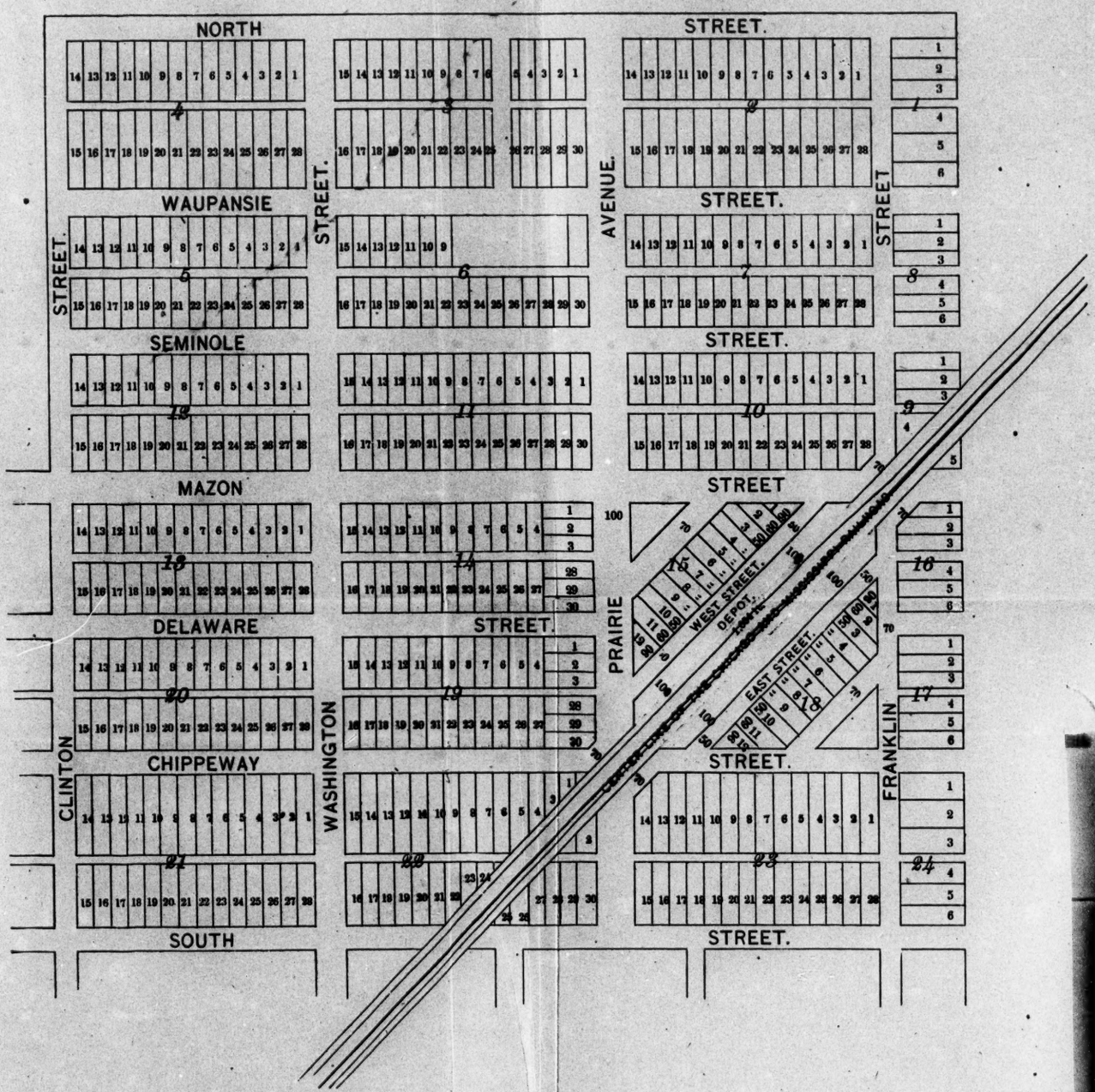
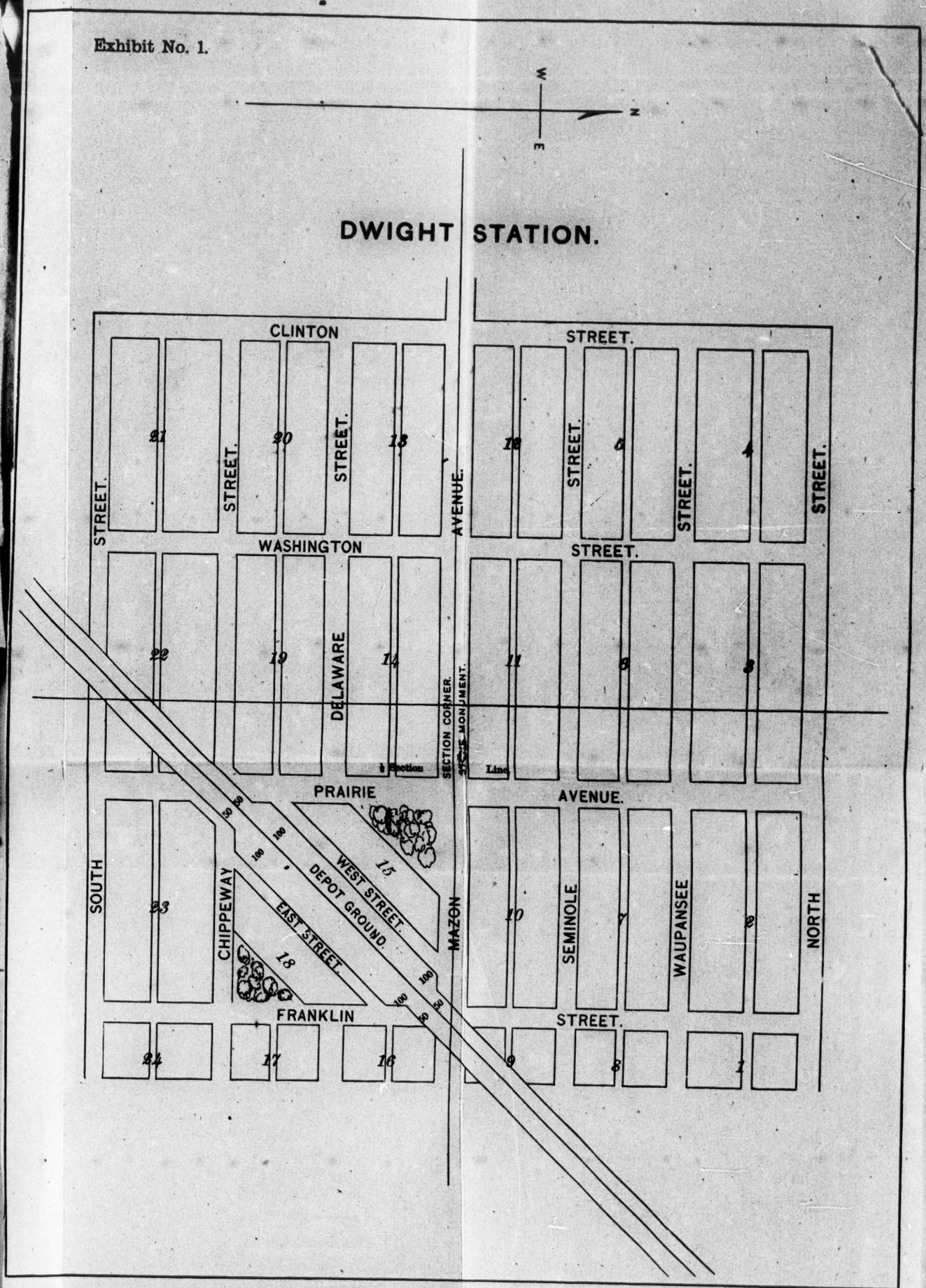


Exhibit No. 1.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WASHINGTON
STREET.
DELAWARE
SECTION CORNER.
STONE MONUMENT.
Section
Line.
PRAIRIE
AVENUE.
SOUTH
CHIPPEWAY
WEST STREET.
DEPOT GROUND.
EAST STREET.
MAZON
SEMINOLE
WAUPANSEE
NORTH
FRANKLIN
STREET.
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